IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4204 OF 2004

1. Maharashtra State Electricity Board, A body corporate formed under The Electricity Supply Act, 1948 having its head office at Prakashgad Bandra (East), Mumbai 400 051

2. Shri M. R. Ambhore
Technical Member (Gen.)
Maharashtra State Electricity Board
Prakashgad, Bandra (East),
Mumbai 400 051

3. Shri C. G. Thakare
Technical Member (T & D)
Maharashtra State Electricity Board
Prakashgad, Bandra (East),
Mumbai 400 051

4. Shri H. A. Patil
Technical Member (Distribution)
Maharashtra State Electricity Board
Prakashgad, Bandra (East),
Mumbai 400 051

5. Shri A. D. Khaparde
Chief Engineer (Distribution)
Maharashtra State Electricity Board
Prakashgad, Bandra (E),
Mumbai 400 051

6. Shri S. N. Katakwar
Superintending Engineer (Dist.)
Maharashtra State Electricity Board
Prakashgad, Bandra (East),
Mumbai 400 051]Applicants

versus

1. The State of Maharashtra

2. Datar Switchgear Limited
A company registered under the Companies Act, 1956, having its

Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangpur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2 having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 4300 OF 2004

Shri B. T. Mahale, 56 years]
Former Executive Engineer(Distribution)]
Presently Executive Engineer,]
Maharashtra State Electricity]
Board, Telecom Division, Chandra Nivas]
Building, Near Mukti Dham, Tilak Peth]
Nashik Road]Applicant

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 4606 OF 2004

Shri G. K. Garg, age 55 years]
Deputy Executive Engineer (Nasik]
Urban Division) Maharashtra State]
Electricity Board, Nashik]Applicant

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 4687 OF 2004

Shri A. K. Pampattiwar, age 60 years]
Ex. Technical Director (Dist.)]
Maharashtra State Electricity Board]
Presently at 1st floor, Harsh Co-op.]
Housing Society, Savarkar Nagar,]
Nagpur - 25]Applicant

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 4715 OF 2004

Shri P. K. Kukde, age 61 years]
Ex. Technical Member (T & D)]
Maharashtra State Electricity Board]
Presently at Tata Power Bombay House,]
Fort, Mumbai]Applicant

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 5901 OF 2004

1. Maharashtra State Electricity]
Board, A body corporate formed under]
The Electricity Supply Act, 1948]
having its head office at Prakashgad]
Bandra (East), Mumbai 400 051]

2. Shri Arunkumar Mago]
Technical Member (Gen.)]
Maharashtra State Electricity Board]

Prakashgad, Bandra (East),]
Mumbai 400 051]

3. Shri Allamshetty Krishna Rao]
Former Accounts Member]
Maharashtra State Electricity Board]
presently at "Saudamini", Haji Ali]
Worli, Mumbai]
4. Shri P. K. Kukde]
Ex. Technical Member (T & D)]
Maharashtra State Electricity Board]
Presently at Tata Power, Bombay House]
Fort, Mumbai]

5. Shri A. K. Pampattiwar]
Ex. Technical Director (Dist.)]
Maharashtra State Electricity Board]
Presently at 1st floor, Harsh Co-op.]
Housing Society, Savarkar Nagar,]
Nagpur - 25]

6. Shri S. D. Kondejkar]
Maharashtra State Electricity Board]

7. Shri H. A. Patil]
Technical Member (Distribution)]
Maharashtra State Electricity Board]
Prakashgad, Bandra (East),]
Mumbai 400 051]Applicants

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]

Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 5902 OF 2004

Shri Allamshetty Krishna Rao]
age 60 years, Former Accounts Member]
Maharashtra State Electricity Board]
presently at "Saudamini", Haji Ali]
Worli, Mumbai]Applicant

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH

CRIMINAL APPLICATION NO. 5904 OF 2004

1. Maharashtra State Electricity]
Board, A body corporate formed under]
The Electricity Supply Act, 1948]
having its head office at Prakashgad]
Bandra (East), Mumbai 400 051]

2. Shri Ashok Basak]
Technical Member (Gen.)]
Maharashtra State Electricity Board]
Prakashgad, Bandra (East),]
Mumbai 400 051]

3. Shri Allamshetty Krishna Rao]
Former Accounts Members]
Maharashtra State Electricity Board]
Presently at "Saudamini" Haji Ali]
Worli, Mumbai]

4. Shri C. N. Gadge]
Former Chief Engineer (Dist.)]
Maharashtra State Electricity Board]

5. Shri H.A. Patil]
Technical Director (Distribution)]
Maharashtra State Electricity Board]
Prakashgad, Bandra (East),]
Mumbai 400 051]

6. Shri B. T. Mahale]
Former Executive Engineer (Dist.)]
Presently Executive Engineer,]
Maharashtra State Electricity Board]
Telecom Division, Chandra Nivas Bldg.]
Near Mukti Dham, Tilak Path,]
Nashik Road]Applicants

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2 having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

WITH
CRIMINAL APPLICATION NO. 3716 OF 2005

Shri H. B. Thakare, age 59 years]

Maharashtra State Electricity Board]
Vidyut Colony No.2, Chhatri Talao Road]
Amaravati]Applicant

versus

1. The State of Maharashtra]

2. Datar Switchgear Limited]
A company registered under the]
Companies Act, 1956, having its]
Corporate Office at F-8, D-Road,]
MIDC, Ambad, Nasik and Registered]
Office at Vakil Wadi, Nasik]

3. Rajan Bhalchandra Datar]
Datar Farm, Anandvalli Shivar,]
Gangapur Road, Nasik]

4. Dattatray Pandarinath Adke]
Senior Manager (Accounts) of]
Respondent No.2, having his office]
at "Suman", 64/20, Erandwala]
Pune 411 044]Respondents

Mr. A. P. Mundargi, Senior Counsel with Mr. C. J. Sawant, Senior Advocate, Mrs. Deepa Chavan and Mr. Sanjeev Kadam for the for the Applicants.

Mr. S. R. Borulkar, P.P. with Mrs. V. R. Bhosale, A.P.P. for the State.

Mr. Adik Shirodkar, Senior Counsel with Mr. Chirag Balsara for the Respondent No.2 and with Mr. Vaibhav Joglekar for Respondent Nos. 3 and 4 a/w. Mr. Luckyraj Indorkar i/b. Shaunak Satpute & Co.

CORAM : D. G. DESHPANDE, &
V. K. TAHILRAMANI,JJ.

DATE : 4TH MAY, 2006

ORAL JUDGMENT (PER D. G. DESHPANDE, J.) :

1. Heard learned counsel for the Applicants,

learned PP, and Counsel for the Respondents.

2. All these Applications are arising out of Criminal Cases filed by the Respondent No.2 and others, for defamation, before the JMFC, Nasik. The Applications are filed for quashing the Complaints. The Applicants are the original accused and employees of Maharashtra State Electricity Board (MSEB). Datar Switchgear Limited was a Company. That MSEB had an agreement regarding supply of certain materials. The dispute arose between the MSEB and Datar Switchgear Limited. The matter was referred to Arbitration. The Arbitrators passed an Award. The MSEB filed Petition against that Award. That Petition was allowed and the Award was set aside. In the intervening period, there were proceedings in between the parties for perjury or contempt etc. Different Affidavits came to be filed on behalf of the MSEB through its different Officers. It is those Affidavits which have defamed the Complainant - Datar Switchgear Limited, and, therefore, they filed nine different complaint cases before the JMFC, Nasik, for defamation, against MSEB and its different Officers, who according to the Complainant had deliberately indulged in defaming

Datar Switchgear Limited.

3. In this background, we heard Mr. Mundargi, Senior Counsel for Applicants - MSEB, the learned P.P. and Mr. Adik Shirodkar, Senior Counsel for the Respondents.

4. Common submissions were made by both of them, though the facts of each of the complaint cases, were given separately, and, therefore, we are deciding all these Criminal Applications, by this common order.

5. Huge compilations of documents were filed by both the sides. We, openly told the counsels earlier, as well as, on the date of the arguments that we will be looking into the original complaints filed by Datar Switchgear Limited, the affidavits wherein defamatory statements were allegedly made. We, told them that we will not be going to any other aspect of the matter. Counsels relied upon different case laws, we, are not referring to any of them, as the case is decided purely on facts.

6. On one of the dates before the matters were

actually heard, we, had asked the counsel for the Complainant to give us a separate compilation comprising of the complaint and the relevant affidavits, in which defamatory statements were made. Accordingly, in all the nine matters separate compilation containing those documents was given and, we are, referring to those documents, about which no dispute was raised by any of the parties. Therefore, reference to the documents, by us, is from those specific compilation.

7. Criminal Application No. 4204 of 2004 arises out of Complaint Case where the accused are (1) MSEB, (2) Shri M. R. Ambhore, (3) Shri C. G. Thakare (4) Shri H.A. Patil, (5) Shri A. D. Khaparde and (6) Shri S. N. Katakwar.

. Criminal Application No. 4300 of 2004 arises out of Complaint Case where there is only one accused Shri B. T. Mahale.

. Criminal Application No. 4606 of 2004 arises out of Complaint case in which there is one accused Shri G. K. Garg.

. Criminal Application No. 4687 of 2004

arises out of Complaint case in which there is one accused Shri A. K. Pampattiwar.

. Criminal Application No. 4715 of 2004 arises out of Complaint Case where there is one accused Mr. P. K. Kukde.

. Criminal Application No. 5901 of 2004 arises out of Complaint Case, where the accused are (1) MSEB, (2) Srhi Arun Kumar Mago (3) Shri Krishna Rao, (4) Mr. P. K. Kukde, (5) Mr. A. K. Pampattiwar, (6) Mr. S. D. Kondejkar and (7) Mr. H. A. Patil.

. Criminal Application No. 5902 of 2004 arises out of Criminal case where there is only one accused Shri Krishna Rao.

. Criminal Application No. 5904 of 2004 arises out of Criminal case, where the accused are (1) MSEB, (2) Mr. Asoke Basak, (3) Shri A. Krishna Rao, (4) Mr. C. N. Gadge, (5) Mr. H. A. Patil and (6) Mr. B. T. Mahale.

. Criminal Application No. 3716 of 2005

arises out of Criminal case where there is only one accused Shri H. B. Thakare.

8. In the complaint before the Magistrate, which is the subject matter of Criminal Application No. 4204 of 2004, the complainant No.1 i.e. Datar Switchgear Limited, filed a Notice of Motion in the High Court being Notice of Motion No. 547 of 2003 dated 12.11.2003, wherein it is stated that accused No. 6 on the instruction, guidance, aid and abatement of Accused Nos. 1, 2 and 3 filed and tendered in Court an affidavit dated 25th June 2004 for and on behalf of accused No.1 to oppose the Notice of Motion. In that affidavit, the accused made various defamatory statements against complainant No.1 with malicious intention to lower and injure the prestige, standing and reputation of the complainant No.1. There were allegations false to the knowledge of the accused, and, those were made inspite of express cautionary notice served by the complainant on the accused on 24.6.2004

9. What is defamatory in the said affidavit of accused No. 6 is given in paragraph Nos. 4 (i) and (ii), the same reads as under :

> **"4(i) .....the Complainant No.1 has been filing various proceedings when the Arbitration Proceedings were concluded on 2.4.04 itself and there was no occasion for any pressurising as imputed on 25.6.04, when the award was already published on 18.6.04.**
>
> **4(ii) That the Accused falsely and libelously asserted that a C.I.D. enquiry has been ordered against the Complainant No.1 in respect of a fraud in respect of the LTLMS Contract and that the Complainant No.1 on being caught, refunded part of the amount withdrawn i.e. Rs.4 Crores in February 1999 but failed and neglected to refund the balance amount...."**

10. In the complaint before the Magistrate, which is subject matter of Criminal Application No. 4300 of 2004, the defamatory statement is reproduced in paragraph 6, wherein it is stated :

> **"Thus, the accused by using the Affidavits filed by him and Shri C. N. Gadge made and caused to be made an imputation before the Hon'ble Mumbai High Court in Contempt Petition No. 95 of 2002 that the Complainant No.1 had withdrawn over Rs.3.14 crores fraudulently..."**

11. From the aforesaid quotation, it will be clear that the sole accused B. T. Mahale, in that case has relied upon and used the affidavit of C. N. Gadge and it was C. N. Gadge who had made allegations of fraud, therefore the sole accused B. T. Mahale has only repeated the defamatory

allegations in his affidavit recording **"fraudulently withdrawing Rs.3.14 crores".**

12. In the complaint before the Magistrate, which is the subject matter of Criminal Application No. 4606 of 2004, the allegation is that the sole accused G. K. Garg, **has used the affidavits filed by Shri C. N. Gadge and B. T. Mahale made and caused to be made an imputation before the Hon'ble Mumbai High Court in Contempt Petition No. 95 of 2002 that the Complainant No.1 had withdrawn over Rs.3.14 crores fraudulently.**

13. In the complaint before the Magistrate, which is the subject matter of Criminal Application No. 4687 of 2004, the sole accused A. K. Pampattiwar has used the affidavit of C. N. Gadge and B. T. Mahale **wherein imputation was made by them in Contempt Petition No. 95 of 2002 that complainant No.1 had withdrawn over Rs.3.14 crores fraudulently.**

14. In the complaint before the Magistrate, which is the subject matter of Criminal Application No. 4715 of 2004, the sole accused P. K. Kukde

filed complaint in response to the show cause notice. In paragraph 5 of the affidavit, the accused referred to and relied upon the affidavit filed by C. N. Gadge on behalf MSEB and further relying upon and repeating and reiterating the affidavit dated 6.9.2001 filed by B. T. Mahale in Writ Petition No. 1671 of 2001, it is alleged that: **" Thus, the accused by using the affidavits filed by Shri C. N. Gadge and Shri B. T. Mahale made and caused to be made an imputation before the Hon'ble Mumbai High Court in Contempt Petition No. 95 of 2002 that the complaint No.1 had withdrawn over Rs.3.14 crores fraudulently".**

15. In the complaint case before the Magistrate, which is the subject matter of Criminal Application No. 5901 of 2004, there were seven accused and it was alleged that the Arbitration Petition was filed by the respondents through accused No. 7 in the High Court being Arbitration Petition No. 285 of 2002. This petition was filed by MSEB - accused No.1 and in this petition, respondents made the following false and defamatory imputations against the Complainant Company in paragraph 4(a) and (b) as under:

(a) At para 35 of the said Petition, the Accused made a defamatory imputation that the Complainants were guilty of fraudulently obtaining loans on the basis of false representations.

(b) At para 49, the Accused imputed that the Complainant Company fraudulently ensured that the Accused no longer had the security of a Bank Guarantee.

It is further alleged that the Arbitration Petition filed by MSEB before the High Court came to be dismissed and the SLP before the Supreme Court also came to be dismissed.

16. In the complaint case before the Magistrate, which was the subject matter of Criminal Application No. 5902 of 2004, where sole accused Krishna Rao is there, it is alleged in paragraph 6 :

"Thus, the Accused by using the Affidavits filed by Shri C. N. Gadge and Shri B. T. Mahale made and caused to be made an imputation before the Hon'ble Mumbai High Court in Contempt Petition No. 95 of 2002 that the Complainant No.1 had withdrawn over Rs.3.14 Crores fraudulently. The imputation of fraud harmed the reputation and standing of the Complainant No.1

17. In the Complaint case before the Magistrate, which was the subject matter of Criminal Application No. 5904 of 2004, in which there are six accused,

it is alleged that : **"Thus, the Accused No.1 through the Accused No. 2 to 6 made and caused to be made an imputation before the Hon'ble Mumbai High Court in Contempt Petition No. 95 of 2002 that the complainant No.1 had withdrawn over Rs.3.14 crores fraudulently..."**

18. In the Complaint case before the Magistrate, which was the subject matter of Criminal Application No. 3716 of 2005, there is only one accused H. B. Thakare. It is alleged that in paragraph 6 that : **"Thus, the Accused by using the Affidavits filed by Shri C. N. Gadge and Shri B. T. Mahale made and caused to be made an imputation before the Hon'ble Mumbai High Court in Contempt Petition No. 95 of 2002 that the Complainant No.1 had withdrawn over Rs.3.14 Crores fraudulently".**

19. In this background of the matter, Mr. Mundargi for the MSEB made the following submissions:

. Firstly, according to him, all these affidavits were filed by the MSEB, through its various Officers in judicial proceedings, pending

before this Court. Secondly he urged that the replies and affidavits by those Officers, were lengthy, and partial statement cannot be taken out of context. Thirdly, he urged, that the matter before the High Court i.e. Arbitration Petition or the Contempt Petition were judicial proceedings which were required, in the circumstances, to be initiated or defended and therefore if any defence or any aggression within the statements were made with reference to the conduct of the complainant no.1, then that would be no defamation.

20. Mr. Mundargi further contended that even if an officer of the MSEB who is made accused in the complaint has relied upon earlier affidavits, that reliance was not in respect of the contents of the affidavit but the reliance was for a particular object and of a particular fact, and, therefore, when the Officers had not relied upon earlier affidavits of his colleagues filed in the High Court fully, then the Officer who is made an accused, cannot be held guilty of defamation. This was a general submission of Mr. Mundargi but made with specific reference to individual case, separately.

21. We, are noting down the following particulars given by Mr. Mundargi as under:-

. In Criminal Application No. 4204 of 2004, an affidavit was filed by accused No.6. Accused No. 6 made the defamatory imputation, as reproduced above. So this is a case where accused No. 6 has not relied upon any other affidavit filed earlier, therefore, this argument of Mr. Mundargi does not apply to this case i.e. Criminal Application No. 4204 of 2004.

. In Criminal Application No. 4300 of 2004, the sole accused is B. T. Mahale, he has relied upon the affidavit of C. N. Gadge made in Contempt Petition No. 95 of 2002 and the affidavit of B.T. Mahale is on record. The defence of Mr. Mundargi in that regard was in paragraph 5 of his affidavit, the deponent B. T. Mahale has stated as under:

> **"I say that Mr. Chandrakant Namdeorao Gadge has filed a detailed Affidavit on behalf of Respondent No.1 to the Contempt Notice issued by this Hon'ble Court. I say that the said Affidavit details the background / circumstances regarding issuance of the circular dated 22nd February 2002. I say that I repeat and reiterate the same as if is part of the present Affidavit. I also crave leave of this Hon'ble Court to refer**

to and rely upon the said Affidavit at the time of hearing of the above Contempt Petition."

. To avoid, repetition, we can say, this is a stand taken by Mr. Mundargi in all the matters. He drew our attention to the explanation in respective affidavits and contended that the officers of MSEB had relied upon earlier affidavits of B.T. Mahale or C. N. Gadge only for the limited purpose of giving background and circumstances regarding issuance of the circular dated 22nd February, 2002. Mr. Mundargi, therefore, contended that if in a given case out of the 9 Cases/ Applications, the accused has relied upon earlier affidavits for a limited purpose and the reliance is over a limited portion tending to explain the circular dated 22nd February 2002, then it cannot be held that the said accused repeated the defamatory allegations made in the earlier affidavits.

. The same is defence in Criminal Application No. 4606 of 2004, wherein there is only one accused G. K. Garg, our attention was drawn to paragraphs 4 and 5, wherein the same defence is raised.

. In Criminal Application No. 4687 of 2004

there is only one accused A. K. Pampattiwar, and in his affidavit, same defence is raised.

. In Criminal Application No. 4715 of 2004 there is only one accused P. K. Kukde and in his affidavit in paragraph 5, same defence is raised.

. In Criminal Application No. 5901 of 2004 there are 7 accused. Affidavit came to be filed by accused No. 7 in Arbitration Petition and the accused No. 7 has made the defamatory statements, which we have reproduced above. Therefore, this is not a case where this argument of Mr. Mundargi can be applicable because accused No.7 has not relied upon any other affidavit.

. In Criminal Application No. 5902 of 2004 there is only one accused Krishna Rao. He has raised the same defence in his affidavit in paragraph 6, as submitted by Mr. Mundargi.

. In Criminal Application No. 5904 of 2004, there are six accused. Affidavit came to be filed by C. N. Gadge, accused No.4 and he relied upon the affidavit of accused No.6 dated 6.9.2001 in Writ

Petition No. 1671 of 2001. In paragraph No. 10 of the affidavit of C. N. Gadge, he has made the following defamatory statement:

> **"In fact the petitioners had withdrawn a sum of over Rs.3.14 crores in contracts relating to Low Tension Management System (LTMS) and LTSC Systems, the details in respect thereof are contained in affidavit dated 12th October 2000 filed by the Respondent No.1 in Writ Petition No. 2221 of 2001. I crave leave to refer to and rely upon the said affidavit dated 12th October 2000 when produced. It is significant that in respect of the said LTMS contract, the State Government has initiated a C.I.D. enquiry against the Petitioners which is still pending".**

Then in the same case, affidavit of B. T. Mahale, accused No. 6 was made available in the compilation. Paragraph 17 of his affidavit is as under:

> **"As far as the contract relating to Low Tension Management Systems is concerned, the same is pending before the Arbitration Tribunal. As pointed out by Respondent No.2 in an affidavit dated 12th October 2001 filed in a writ petition No. 2221 of 2000, the claims against the Petitioners include a claim for over Rs.3.14 Crores fraudulently withdrawn by the Petitioners. A copy of the said affidavit without annexures is annexed hereto and marked as Exhibit 'F'. I repeat and reiterate and confirm what is set out therein. I crave leave to refer to and rely upon the annexation of the said affidavit as and when produced."**

Then, there is one more affidavit of Ashok Kumar Bandoo Joshi, wherein in paragraph 11(a), it is stated as under:

> **"In respect of the contract for supply of LTSCs on a lease basis, the Petitioner fraudulently withdraw large sum of money under the Letter of Credit issued by the Respondent No.2 by submitting false bills at higher rates or in respect of LTSCs which were already removed. The contract for lease of LTSCs interalia provided that lower rate of lease rent would be charged after the period of 3 years from the date of installation of the LTSCs. However, in respect of bills submitted by the Petitioners for the quarters June, 1998, in respect of the Pune, Solapur, Satara and Sangli circles, the petitioners withdraw amounts under the letter of Credit by charging higher rates in respect of LTSCs for which 3 years had already expired. Similarly, in respect of the Sangli Circle, though the petitioner had removed approximately 800 objects, and not replaced the same the petitioners charged for the same and drew amounts thereunder. The petitioners in the aforesaid manner overcharged the Respondent no.2 to an extent of over Rs.71 lacs. The aforesaid disputes are the subject matters of pending Arbitration proceedings. Annexed hereto and marked Exhibit E Coll. are copies of the bills submitted by the petitioners for the quarter endings March, June & September, 1998 in respect of Pune, Solapur, Satara and Sangli circles. Though subsequently, in correspondence, the petitioners admitted that they had overcharged the respondent No.2, they never gave credit for the said amounts. A copy of a letter dated 13th August, 1998 in this behalf is annexed hereto and marked Exhibit F."**

This is therefore a case where the submissions of Mr. Mundargi, would not be applicable because both the deponents C. N. Gadge and B. T. Mahale are accused.

. In Criminal Application No. 3716 of 2005 there is only one accused H. B. Thakare. He has relied upon affidavits of C. N. Gadge and B. T. Mahale. Affidavit of the sole accused H. B. Thakare was made available, to us, in the compilation given by the complainant and nothing was pointed out by Mr. Mundargi regarding the explanation tried to be tendered, as above.

22. It will be clear therefore that the defence of Mr. Mundargi is in respect of those cases wherein same explanation is given that the earlier affidavits were relied for a limited purpose. The question is whether this argument can be accepted. In our opinion, this argument of Mr. Mundargi cannot be accepted because when the earlier affidavits were explained by Mr. Mundargi, and, the explanation was that those affidavits were relied upon for the purpose of clarifying particular

circular, this statement in the respective affidavits is not a conditional one. It is nowhere stated by way of explanation that out of the entire affidavit, the accused in the respective case is relying upon only that part of the earlier affidavits which relates to explanation of the circumstances of the circular. To the contrary, every where it is alleged that deponent will rely upon the affidavit as and when produced. It is therefore clear that the argument of Mr. Mundargi, cannot be accepted because it was not a conditional reliance or limited reliance upon the earlier affidavit, earlier affidavit is relied fully, and therefore whatever is contended in the earlier affidavit is reiterated and that is the reason why the complainant had filed defamatory cases against others. Filing of nine cases indicates that according to the complainant the defamation is caused not by the person who made defamatory statement in the affidavit but also by those who repeated those allegations and reiterated them in their subsequent affidavits.

23. Next submission of Mr. Mundargi was that in some of the nine cases above, many officers of MSEB

have been included. In other words, he wanted to contend that those who are not concerned with a particular affidavit or a defamatory statement making or repeating defamatory statements cannot be made an accused only because he happens to be the Officer of the MSEB.

24. We, have given above, all the details of different cases, and, who are accused in them, and therefore, without repetition of facts it can be said that since the affidavits came to be made on behalf of MSEB, the MSEB can and has to be an accused No.1 and the other accused has to be the person who made or repeated the defamatory allegations. Others not concerned are improperly joined by the complainant. We, will clarify this, in the operative part of the Order and therefore the quashing was to be allowed in respect of those others.

25. The next contention of Mr. Mundargi was that for one affidavit allegedly contending the defamatory matter, more than one complaint has been filed. We will have to direct the trial court to consider that aspect again, and, ask the complainant

to stick up to one complaint if that be so and withdraw the other and/or Magistrate can dismissed the other complaint, if one man is sought to be prosecuted in two cases for one defamatory statement of his.

26. The last contention of Mr. Mundargi was that all the accused are claiming First Exception under Section 499. First Exception under Section 499 of IPC reads as under:

> **"Imputation of truth which public good requires to be made or published - It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."**

Mr. Mundargi, therefore, contended that whatever was stated by the accused in their respective affidavits about fraudulent withdrawal about false representation about C.I.D. enquiry was not defamation, because it was for public good that the facts were stated in the respective affidavits before this Court.

27. As against all these submissions of Mr. Mundargi, Mr. Shirodkar contended that as a matter

of fact, there was no CID enquiry against the complainant. In any case CID enquiry was not directed against the complainant. There was no finding of the CID that the complainants were guilty of fraud of any type, nature and to any extent. The complainant has never withdrawn any amount fraudulently but to the contrary when the complainant realised they refunded the excess amount to MSEB reserving their right to receive compensation or damages. Mr. Shirodkar also contended that all these allegations were made not only to defame the complainant but to see that the complainant is totally destroyed in his business reputation and standing. Mr. Shirodkar contended that the affidavits from which explanation is tried to be given by Mr. Mundargi that not all part of the earlier affidavit was accepted but only acceptance or repetition was in respect of the circumstances about the circular, there was not a conditional acceptance of the earlier affidavit and from the wordings of the explanatory affidavit, it was clear that the earlier affidavits were accepted in toto and fully. In the circumstances, it has to be noted that according to Mr. Mundargi even the Advocates, who helped in affirmation of the

affidavits were made witnesses and a person who is accused in one case is made witness by the complainant. Regarding first aspect, Mr. Shirodkar stated that the complainant may not examine Advocate as his witness because the tendering and filing of affidavits in court can be proved by other circumstances but referring and citing one accused in another matter in other complaint, Mr. Shirodkar contended that there was no legal bar.

28. As regards the defence under First Exception raised under Section 499 of IPC, Mr. Shirdokar contended that since the accused raised a defence, then raising of such defence shifts the burden upon the accused as provided by Section 105 of the Evidence Act, and, that can be done during trial and not by making submissions before this Court. Therefore, for all the reasons Mr. Shirodkar contended that all the Applications are liable to be dismissed because according to him the statements and defamatory imputations in all the cases made by the different accused in different affidavits were perse defamatory, and, therefore when the statements are perse defamatory, then this court could not interfere with quashing the complaint.

29. I find considerable force in the submissions made by Mr. Shirodkar, some of the aspects have already been considered, by us, and it has to be accepted as a legal position that if in a defamation case the accused claims protection under any of the Exception then as required by Section 105 of the Evidence Act, he has to bring his defence, which can be done only at the stage of trial.

30. However, Mr. Shirodkar could not justify how apart from a person making or repeating defamatory allegations and MSEB and others could be roped in as accused. Therefore, considering these facts, we pass the following order :

ORDER

1. Criminal Application No. 4204 of 2004 is partly allowed i.e. complaint in respect of accused nos. 2 to 5 is quashed and set aside. Complaint will proceed against the accused Nos. 1 and 6 only. Rule partly allowed.

2. Criminal Application No. 4300 of 2004 is

dismissed. Rule is discharged.

3. Criminal Application No. 4606 of 2004 is dismissed. Rule is discharged.

4. Criminal Application No. 4687 of 2004 is dismissed. Rule is discharged.

5. Criminal Application No. 4715 of 2004 is dismissed. Rule is discharged.

6. Criminal Application No. 5901 of 2004 is partly allowed. Complaint in respect of Accused Nos. 2, 3, 4, 5 and 6 is quashed and set aside. Complaint will proceed against Accused nos. 1 and 7 only. Rule partly allowed.

7. Criminal Application No. 5902 of 2004 is dismissed. Rule is discharged.

8. Criminal Application No. 5904 of 2004 is partly allowed. Complaint against Accused Nos. 2, 3 and 5 is quashed and set aside. Complaint will proceed against Accused Nos. 1, 4 and 6.

9. Criminal Application NO. 3716 of 2005 is dismissed. Rule is discharged.

10. It is clarified that none of the observations as stated above will influence the trial court as they are all prima facie findings.

11. It is clarified that if the Magistrate finds that one person is made accused in two cases in redirect of same affidavit, then the Magistrate will pass appropriate orders.

12. Our discussion will not prohibit the Magistrate or come in the way of the complainant to prove any additional defamatory statement made by the accused in that particular criminal case to which our attention was not drawn or brought to our notice.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)

. After this Order was pronounced, the learned

Counsel for the Complainant prays that the interim order should be continued till 25.7.2006, by which time, the Supreme Court will reopen. Mr. Shirodkar, the learned counsel for the Respondents does not seem to have serious objection, but, he submitted that if the Applicants are unable to procure any order in the meanwhile from the Apex Court, a fixed programme should be chalked out for deciding the matters. In view of these submissions, we, pass the following order which is part of the aforesaid order:

. Interim stay granted earlier, to continue till 25.7.2006. If by that time, the Applicants - Accused are unable to procure any stay order from the Higher Court, the Magistrate will start the proceedings from 26.7.2006 and in any case, complete the trial within six months thereafter.

. Certified copy expedited.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)